

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MARY MCKENZIE TRUST, et al.,

Case No. 12-14412

Plaintiffs,

HON. DENISE PAGE HOOD

v.

DETECTIVE BARTLE, et al.,

Defendants.

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**ORDER DENYING WITHOUT PREJUDICE**  
**DEFENDANTS' MOTION TO DISMISS [Dkt. No. 49]**

Before the Court is Defendants' Motion to Dismiss. **[Dkt. No. 49, filed April 28, 2014]** The Motion is fully briefed.

As stated in more detail in their Motion to Dismiss, Defendants assert that Plaintiffs have demonstrated a complete disregard for the discovery process, as established by the Federal Rules of Civil Procedure. Defendants claim they have attempted to pursue proper discovery but have been unable to because of Plaintiffs' improper conduct, including a clear pattern of delay. Defendants assert that they have been prejudiced by Plaintiff's conduct and that such conduct warrants sanctions, up to and including dismissal, pursuant to the following Federal Rules of Civil Procedure: (a) Rule 37; (b) Rule 26(g)(1); and (c) Rule 41(b). Plaintiffs respond that

most of Defendants' claimed issues have been resolved, and that Plaintiffs have cured the oversight and notified Defendants regarding the issuance of the subpoena to David Orr and American Trailer.

The Court notes that the scope of this case has shrunk considerably since the time Defendants' Motion to Dismiss was filed. Only one claim involving Plaintiff Michael Perry and Defendant Detective Bartle remains before the Court. For those reasons, the Court exercises its discretion to deny without prejudice Defendants' Motion to Dismiss. The Court will allow the parties to address any outstanding discovery disputes at the status conference set for Tuesday, November 1, 2016.

Accordingly,

**IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss [Dkt. No. 49] is **DENIED WITHOUT PREJUDICE**.

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: September 30, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 30, 2016, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager